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Federal Communications Commission

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 95-134
Table of Allotments)	RM-8679
FM Broadcast Stations)	RM-8720
(Sanford and Robbins, North Carolina) ¹)	

REPORT AND ORDER (Proceeding Terminated)

Adopted: January 3, 1997

Released: January 10, 1997

By the Chief, Allocations Branch:

1. At the request of Woolstone Corporation ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making* ("Notice"), 10 FCC Rcd 9266 (1995). The *Notice* proposed the allotment of Channel 276A to Sanford, North Carolina, as the community's fifth local transmission service.² WWGP Broadcasting Corporation ("WWGP"), licensee of Station WFJA(FM), Channel 288A, Sanford, North Carolina, filed a counterproposal requesting that the Commission allot Channel 276A at Sanford, order that Station WFJA(FM) substitute Channel 276A for its Channel 288A, and delete Channel 288A from the FM Table of Allotments, or, in the alternative, allot Channel 276A at Robbins, North Carolina, as the community's first local transmission service. Petitioner and WWGP filed responsive pleadings.

2. WWGP states that the community of Sanford, population 22,000 persons, is already abundantly well served by four local aural transmission services. It also receives a 60dBu signal from more than five stations licensed to other communities and has two LPTV stations. In support of its proposal, WWGP states that the substitution of Channel 276A for its Channel 288A at Sanford, and deletion of Channel 288A would cure two grandfathered short-spacings to Stations WFMX(FM), Statesville, North Carolina, and WDCG(FM), Durham, North Carolina. Elimination of these short-spacings would allow Station WFJA(FM) to increase power to 6kW and serve an additional 16,599 persons. It would also generally improve the service provided by

¹ Robbins, North Carolina has been added to the caption.

² The *Notice of Proposed Rule Making* incorrectly characterized this proposal as the "community's second local FM service." Sanford has another FM station, noncommercial-educational Station WDCC(FM), and two AM stations, all of which are considered local transmission services under Section 307(b) of the Communications Act of 1934, as amended. See *Valley Broadcasters, Inc.*, 5 FCC Rcd 2785, 2788 (1990); see also *Change of Community of License MO&O*, 5 FCC Rcd 7094, 7097 (1990).

all three stations and would thus benefit the public.

3. WWGP also states that if the Commission decides not to grant its proposal at Sanford, in the alternative, the Commission should allot Channel 276A at Robbins, North Carolina. WWGP states that Robbins is deserving of an allotment. It is an incorporated community with a 1990 Census population of 970 persons, and a locally updated population of 1,002 persons. WWGP also states that Robbins has a Mayor and Town Council, provides fire and police services, has six churches, its own schools and library and provides water, sewer and garbage services. It also has numerous businesses.

4. In its reply comments, petitioner states that the allotment of an additional commercial FM service in Sanford would serve the public interest. Petitioner states that the Commission should prefer its petition over WWGP's counterproposal because petitioner proposes to add a new voice to the community of Sanford. Petitioner also claims that the counterproposal is an effort by WWGP to preclude the use of Channel 276 competitively. In addition, petitioner states that WWGP's first option to substitute Channel 276A for Channel 288A is not in the public interest because the elimination of the grandfathered shortspacings will result in minimal reduction of interference, with only 18 persons affected by the interference caused by the short spacing to Station WDCG, and 1,444 persons affected by the interference caused by the short spacing to Station WFMX.³

5. Petitioner argues that the Commission should not adopt the counterproposal's second option, to allot Channel 276A at Robbins, North Carolina, because an additional commercial FM station at Sanford should be preferred over the allotment of the first local service to the community of Robbins, U.S. Census population 970. Petitioner also points out that a station at Robbins would serve fewer persons, and that the allotment at Sanford would be a more efficient use of spectrum. Petitioner also questions the sufficiency of the expression of interest in the Robbins allotment because WWGP stated its intention to apply for the channel in its engineering report attached as an exhibit to its counterproposal, rather than in the text of the counterproposal itself.

6. In late-filed further reply comments, WWGP submitted an additional statement of interest and pledge to apply for the channel at Robbins, if allotted, signed by counsel. Petitioner responded to these comments with a motion to strike and a response that the Commission should not accept this late-filed cure, because all counterproposals are expected to be "technically and

³ Petitioner incorrectly argues that the counterproposal for Sanford proposes a nonadjacent channel upgrade which must be subjected to competing expressions of interest if adopted. The counterproposal actually requests adoption of an equivalent channel substitution, not an upgrade. It is well settled that such a substitution is not subject to competing expressions of interest. Petitioner also incorrectly argues that WWGP's proposal at Sanford would result in a loss of service to some 63,620 persons by the deletion of Channel 288A. This argument ignores the fact that WWGP requested a channel substitution, not a channel deletion. Furthermore, since WWGP proposed to operate Station WFJA on Channel 276A at increased power, albeit at a site approximately three miles from its present site, its service area would have increased, not decreased. These issues are moot considering the outcome herein.

procedurally correct when filed," citing *Rosendale, New York*, 10 FCC Rcd 11471(1995), *aff'd on other grounds*, 11 FCC Rcd 3607 (1996); *Arlington, Texas*, 8 FCC Rcd 4281 (1993); *Hondo, Texas*, 7 FCC Rcd 7610 (1992); *Flora, Mississippi*, 7 FCC Rcd 5477 (1992).

7. **Discussion.** Initially, we address the sufficiency of WWGP's counterproposal. In what we believe is a case of first impression, we conclude that WWGP's counterproposal was acceptable for consideration at filing. All of the cases cited by petitioner are inapposite because they were decisions dismissing defective counterproposals which had omitted a crucial piece of information. The counterproposal was timely filed and included all of the information required to give it full consideration. See *Provincetown, Dennis, Dennis Port, West Yarmouth and Harwich Port, Massachusetts*, 8 FCC Rcd 19 (1992). It was properly signed by an attorney pursuant to Section 1.52 of the Rules, and incorporated an engineering exhibit which included the statement that the petitioner would apply for the channel if allotted, as well as the technical showings required of all counterproposals: channel, class, specific site coordinates and studies showing that the allotment was fully spaced. The fact that the statement of interest was placed in the engineering portion of the document does not render it unacceptable for filing because the entire engineering exhibit was incorporated by reference into the body of the counterproposal, rendering it "technically correct and substantially complete" when it was filed. *Id.* Although we usually expect expressions of interest to appear in the body of the counterproposal itself, there is no explicit instruction on this matter and we do not believe that this small error rises to the level of a defect requiring dismissal as incomplete. We will accept the counterproposal as filed and consider the proposals under the FM allotment priorities.⁴

8. In considering the proposals before us, only one of them, WWGP's proposal at Robbins, would provide a first local aural transmission service which triggers Allotment Priority number 3. The proposals at Sanford would fall under Allotment Priority number 4, because one would provide a fifth local service and the other would provide slightly improved service under the *status quo* of four local services. Robbins is clearly a community for allotment purposes. It is incorporated, has a population of approximately 1000 persons, has a government and municipal services, and has schools and library as well as businesses and churches. Accordingly, we will grant the proposal to allot Channel 276A at Robbins, North Carolina, as the community's first local aural transmission service.

9. Channel 276A can be allotted at Robbins, North Carolina without the imposition of a site restriction.⁵

10. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and

⁴ The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; (4) other public interest matters. Priorities (2) and (3) are given equal weight. *Revision of FM Assignment Procedures*, 90 FCC 2d 88 (1982).

⁵ The coordinates for Channel 276A at Robbins are North Latitude 35-25-48 and West Longitude 79-34-48.

(r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective February 24, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Robbins, North Carolina	276A

11. The window period for filing applications for Channel 276A at Robbins, North Carolina, will open on February 24, 1997, and close on March 27, 1997.

12. IT IS FURTHER ORDERED, That the proposal to allot Channel 276A at Sanford, North Carolina, and the proposal to substitute Channel 276A for Channel 288A at Sanford, North Carolina, and modify the license of Station WFJA(FM) accordingly, are DENIED.

13. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 418 2130. Questions related to the window application filing process for Channel 276A at Robbins, North Carolina, should be addressed to the Audio Services Division, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau